

**REMARKS**

Claims 1-5, 7-15 and 17-20 were pending in the application. Claim 1 is an independent claim, and claims 2-5 and 7-10 depend there from. Claim 11 is an independent claim, and claims 12-15 and 17-19 depend there from. Claim 20 is an independent claim. Claims 1, 11 and 20 are currently amended. Applicants respectfully request that the application be reconsidered in view of the amendments set forth above and the following remarks.

**Rejections Under 35 U.S.C. §103(a) – Gatts and Sheridan**

In point 3 on page 2 of the final Office Action, independent claims 1 and 11, and dependent claims 2-5, 7-8, 12-15 and 17-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gatts et al., U.S. Patent 6,004,259 (hereinafter “Gatts”) in view of Sheridan, U.S. Patent No. 6,256,965. The Applicants respectfully traverse the rejections for at least the reasons set forth below.

The proposed combination of Gatts and Sheridan are different from Applicant’s amended independent claim 1 since they do not teach or suggest by themselves or in combination, *inter alia*, the claimed method steps of “receiving at least one triggering event by an audio enabled toy comprising a handheld stuffed animal,” and “determining from within said audio enabled toy, a playback operating mode from a plurality of playback operating modes based on said received triggering event, wherein said plurality of playback operating modes comprises a constant heartbeat mode, an increasing heartbeat mode and a decreasing heartbeat mode.”

Rather, Gatts discloses a system including “a sound transducer 2 disposed in the cradle 1 beneath the level of the infant positioned therein on mattress 33.” (Gatts, Column 3, Lines 52-54 (emphasis added)). Further, Gatts discloses “automatically var[ying] the environmental stimuli of the cradle in a day-night cycle to simulate the mother’s activities while awake or sleeping.... The solar sensor 4 detects reduced ambient light and switches to the

**“nighttime” program** of motion and sound. Of course, such **day or night operating programs** may also be implemented under control of a timer or manual switch.” (Gatts, Column 7, Lines 3-13 (emphasis added)). Sheridan discloses a “plush toy **bed.**” (Sheridan, Title).

The proposed combination of Gatts and Sheridan at least fail to disclose, for example, “receiving at least one triggering event **by an audio enabled toy comprising a handheld stuffed animal,**” as set forth in Applicant’s amended claim 1. The Applicant appreciates the Examiner’s recognition in the final Office Action that “Gatts fails to teach such a method carried out by an audio enabled toy comprising a stuffed animal.” (Office Action, Page 3, Line 7-8). Sheridan fails to remedy the deficiencies of Gatts. The final Office Action states that “Sheridan teaches a bedding or similar article to hold an infant or child which also takes the shape of a stuffed animal to cradle the user into relaxation. Regarding the ‘audio enabled toy’ of claim 1, Sheridan further teaches the generation of a human heartbeat or mother’s voice for pacifying a child produced by a sound generator (as also disclosed by Gatts and the instant application) which may be incorporated with the toy bed (col. 6, lines 60-67).” (Office Action, Page 3, Lines 8-13). However, the plush toy bed disclosed in Sheridan is clearly not “a handheld stuffed animal,” as set forth in Applicant’s amended, independent claim 1. Thus, neither Gatts nor Sheridan, alone or in any combination, discloses “receiving at least one triggering event **by an audio enabled toy comprising a handheld stuffed animal,**” as set forth in Applicant’s amended claim 1.

Additionally, the proposed combination of Gatts and Sheridan at least fail to disclose, for example, “determining from within said audio enabled toy, a playback operating mode from a plurality of playback operating modes based on said received triggering event, **wherein said plurality of playback operating modes comprises a constant heartbeat mode, an increasing heartbeat mode and a decreasing heartbeat mode,**” as set forth in Applicant’s amended claim 1. Sheridan is silent regarding a plurality of playback operating modes and fails to disclose an increasing heartbeat mode and a decreasing heartbeat mode. Regarding Gatts, the Response to Arguments section of the final Office Action states the following:

The daytime playback operating mode of Gatts is interpreted as the increasing heartbeat mode because the more light that is detected by the sensor, the more the beat rate of the heart, and its accompanying sound, is increased. Once the present daytime value is reached, the heartbeat mode becomes constant, thus defining a constant heartbeat mode. And likewise, as less light is detected, the system increments the heart beat and its accompanying sounds to decrease, thus providing a nighttime mode or “decreasing heartbeat mode” (col. 9, lines 56-68 – col. 10, lines 1-11).

(Final Office Action, Response to Arguments Section, Pages 7-8). However, as mentioned above, Gatts only discloses a daytime playback operating mode and a nighttime playback operating mode. Applicant's independent claim 1 sets forth “a constant heartbeat mode, an increasing heartbeat mode and a decreasing heartbeat mode.” Applicant's independent claim 1 identifies at least three, separate modes of operation. Gatts only discloses two modes of operation and therefore, cannot disclose “a constant heartbeat mode, an increasing heartbeat mode and a decreasing heartbeat mode.” If the Examiner interprets Gatts' daytime playback operating mode to be an increasing mode and Gatts' nighttime playback operating mode to be a decreasing mode, then Gatts fails to disclose a constant heartbeat mode because using the Examiner's interpretation, neither Gatts' daytime playback operating mode nor Gatts' nighttime playback operating mode is only a constant heartbeat mode (i.e., if a mode includes an increasing or decreasing heartbeat, it is not a constant heartbeat mode). Thus, neither Gatts nor Sheridan, alone or in any combination, discloses “determining from within said audio enabled toy, a playback operating mode from a plurality of playback operating modes based on said received triggering event, wherein said plurality of playback operating modes comprises a constant heartbeat mode, an increasing heartbeat mode and a decreasing heartbeat mode,” as set forth in Applicant's amended claim 1.

With regard to Applicant's independent, amended claim 11, the proposed combination of Gatts and Sheridan are different from Applicant's amended independent claim 11 since they do not teach or suggest by themselves or in combination, *inter alia*, “a processing circuit that

receives at least one triggering event by an audio enabled toy comprising a handheld stuffed animal” and “said processing circuit determines a playback operating mode from a plurality of playback operating modes based on said received triggering event and selects from within said audio enabled toy, at least one sound that mimics a mother’s sound from a plurality of mother’s sounds based on said determined playback operating mode, wherein said plurality of playback operating modes comprises a constant heartbeat mode, an increasing heartbeat mode and a decreasing heartbeat mode.”

Rather, Gatts discloses a system including “a sound transducer 2 disposed in the cradle 1 beneath the level of the infant positioned therein on mattress 33.” (Gatts, Column 3, Lines 52-54 (emphasis added)). Further, Gatts discloses “automatically var[ying] the environmental stimuli of the cradle in a day-night cycle to simulate the mother’s activities while awake or sleeping.... The solar sensor 4 detects reduced ambient light and switches to the “nighttime” program of motion and sound. Of course, such day or night operating programs may also be implemented under control of a timer or manual switch.” (Gatts, Column 7, Lines 3-13 (emphasis added)). Sheridan discloses a “plush toy bed.” (Sheridan, Title).

The proposed combination of Gatts and Sheridan at least fail to disclose, for example, “a processing circuit that receives at least one triggering event by an audio enabled toy comprising a handheld stuffed animal,” as set forth in Applicant’s amended claim 11. The Applicant appreciates the Examiner’s recognition in the final Office Action that “Gatts fails to teach such a system embodied in an audio enabled toy comprising a stuffed animal.” (Office Action, Page 4, Lines 12-13). Sheridan fails to remedy the deficiencies of Gatts. The final Office Action states that “Sheridan teaches a bedding or similar article to hold an infant or child which also takes the shape of a stuffed animal to cradle the user into relaxation. Regarding the ‘audio enabled toy’ of claim 11, Sheridan further teaches the generation of a human heartbeat or mother’s voice for pacifying a child produced by a sound generator (as also disclosed by Gatts and the instant application) which may be incorporated with the toy bed (col. 6, lines 60-67).” (Office Action, Page 3, Lines 13-18). However, the plush toy bed disclosed in Sheridan is clearly not “a handheld stuffed animal,” as set forth in Applicant’s amended, independent claim

11. Thus, neither Gatts nor Sheridan, alone or in any combination, discloses “a processing circuit that receives at least one triggering event by an audio enabled toy comprising a handheld stuffed animal,” as set forth in Applicant’s amended claim 11.

Additionally, the proposed combination of Gatts and Sheridan at least fail to disclose, for example, “said processing circuit determines a playback operating mode from a plurality of playback operating modes based on said received triggering event and selects from within said audio enabled toy, at least one sound that mimics a mother’s sound from a plurality of mother’s sounds based on said determined playback operating mode, wherein said plurality of playback operating modes comprises a constant heartbeat mode, an increasing heartbeat mode and a decreasing heartbeat mode,” as set forth in Applicant’s amended claim 11. Sheridan is silent regarding a plurality of playback operating modes and fails to disclose an increasing heartbeat mode and a decreasing heartbeat mode. Regarding Gatts, the Response to Arguments section of the final Office Action states the following:

The daytime playback operating mode of Gatts is interpreted as the increasing heartbeat mode because the more light that is detected by the sensor, the more the beat rate of the heart, and its accompanying sound, is increased. Once the present daytime value is reached, the heartbeat mode becomes constant, thus defining a constant heartbeat mode. And likewise, as less light is detected, the system increments the heart beat and its accompanying sounds to decrease, thus providing a nighttime mode or “decreasing heartbeat mode” (col. 9, lines 56-68 – col. 10, lines 1-11).

(Final Office Action, Response to Arguments Section, Pages 7-8). However, Gatts only discloses a daytime playback operating mode and a nighttime playback operating mode. Applicant’s independent claim 11 sets forth “a constant heartbeat mode, an increasing heartbeat mode and a decreasing heartbeat mode.” Applicant’s independent claim 11 identifies at least three, separate modes of operation. Gatts only discloses two modes of operation and therefore, cannot disclose “a constant heartbeat mode, an increasing heartbeat mode and a decreasing heartbeat mode.” If the Examiner interprets Gatts’ daytime playback operating mode to be an

increasing mode and Gatts' nighttime playback operating mode to be a decreasing mode, then Gatts fails to disclose a constant heartbeat mode because using the Examiner's interpretation, neither Gatts' daytime playback operating mode nor Gatts' nighttime playback operating mode is only a constant heartbeat mode (i.e., if a mode includes an increasing or decreasing heartbeat, it is not a constant heartbeat mode). Thus, neither Gatts nor Sheridan, alone or in any combination, discloses "said processing circuit determines a playback operating mode from a plurality of playback operating modes based on said received triggering event and selects from within said audio enabled toy, at least one sound that mimics a mother's sound from a plurality of mother's sounds based on said determined playback operating mode, wherein said plurality of playback operating modes comprises a constant heartbeat mode, an increasing heartbeat mode and a decreasing heartbeat mode," as set forth in Applicant's amended claim 11.

The Applicant respectfully submits that, based upon the above, the proposed combination of Gatts and Sheridan fails to teach or suggest by themselves or in combination all of the limitations of Applicant's independent claims 1 and 11, and that rejections of claim 1 and 11 under 35 U.S.C. §103(a) cannot be maintained. Therefore, Applicant respectfully requests that the rejections of claim 1 and 11 under 35 U.S.C. §103(a), be withdrawn.

Because dependent claims 2-5, 7-8, 12-15 and 17-18 depend, directly or indirectly, from independent claim 1 or 11, and because claims 1 and 11 are allowable over the proposed combination of references, the Applicant asserts that rejections of dependent claims 2-5, 7-8, 12-15 and 17-18 are now moot. The Applicant asserts that claims 2-5, 7-8, 12-15 and 17-18 are also allowable over the proposed combination of references and requests that the rejections of claims 2-5, 7-8, 12-15 and 17-18 be withdrawn.

**Rejections Under 35 U.S.C. §103(a) – Gatts, Sheridan and Kulick**

In point 4 on page 5 of the final Office Action, independent claim 20, and dependent claims 9, 10 and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gatts in view of Sheridan and further in view of Kulick, U.S. Patent No. 6,692,330. The Applicants respectfully traverse the rejections for at least the reasons set forth below.

The proposed combination of Gatts, Sheridan and Kulick are different from Applicant's amended independent claim 20 since they do not teach or suggest by themselves or in combination, *inter alia*, "a mode control unit coupled to said processing circuit for determining a playback operating mode from a plurality of playback operating modes, wherein said plurality of playback operating modes comprises a constant heartbeat mode, an increasing heartbeat mode and a decreasing heartbeat mode."

As demonstrated above, neither Gatts nor Sheridan, alone or in any combination, discloses "a mode control unit coupled to said processing circuit for determining a playback operating mode from a plurality of playback operating modes, wherein said plurality of playback operating modes comprises a constant heartbeat mode, an increasing heartbeat mode and a decreasing heartbeat mode," as set forth in Applicant's amended claim 20. Kulick fails to remedy the deficiencies of Gatts and Sheridan. Kulick discloses "[a]n infant toy includes a body portion having an interior cavity within which an audio device is disposed. The body portion has a soft exterior surface. The audio device has 'play' and 'record' functions, both of which may be activated manually or by voice. The audio device has the capability of playing pre-recorded sounds such as soothing music, user-recorded sounds such as the parent' voices, or a combination of pre-recorded sounds and user-recorded sounds. The toy can cease operation after a predetermined period of time. By setting the toy in the voice-activated mode, the toy can comfort an infant when necessary and turn itself off after the infant has fallen asleep." (Kulick, Abstract). Nowhere in Kulick is there any mention of a plurality of playback operating modes, a constant heartbeat mode, an increasing heartbeat mode and/or a decreasing heartbeat mode. Thus, Gatts, Sheridan and Kulick, alone or in any combination, fail to disclose "a mode control unit coupled to said processing circuit for determining a playback operating mode from a plurality of playback operating modes, wherein said plurality of playback operating modes

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**comprises a constant heartbeat mode, an increasing heartbeat mode and a decreasing heartbeat mode,”** as set forth in Applicant’s amended claim 20

The Applicant respectfully submits that, based upon the above, the proposed combination of Gatts, Sheridan and Kulick fails to teach or suggest by themselves or in combination all of the limitations of Applicant’s independent claim 20, and that rejection of claim 20 under 35 U.S.C. §103(a) cannot be maintained. Therefore, Applicant respectfully requests that the rejection of claim 20 under 35 U.S.C. §103(a), be withdrawn.

As discussed previously with regard to at least independent claims 1 and 11, Gatts, Sheridan and the combination of Gatts and Sheridan does not teach all of the claim limitations. Accordingly, Gatts, Sheridan and the combination of Gatts and Sheridan does not teach all of the limitations of any of the associated dependent claims, including claims 9, 10 and 19. Additionally, Kulick fails to make up for the aforementioned deficiencies of Gatts, Sheridan and the combination of Gatts and Sheridan.

Accordingly, based at least on the foregoing, including arguments presented previously with regard to independent claims 1 and 11, the Applicant respectfully submits that dependent claims 9, 10 and 19 are allowable over Gatts, Sheridan, Kulick and any combination of Gatts, Sheridan and Kulick. Therefore, the Applicant respectfully requests that the rejections of claims 9, 10 and 19 be withdrawn.

### **Final Matters**

The Office Action makes various statements regarding former claims 1-5, 7-15 and 17-20, 35 U.S.C. § 103(a), the Gatts reference, the Sheridan reference, the Kulick reference, one skilled in the art, etc. that are now moot in view of the previously presented amendments and/or

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arguments. Thus, the Applicants will not address all of such statements at the present time. However, the Applicants expressly reserve the right to challenge such statements in the future should the need arise (e.g., if such statements should become relevant by appearing in a rejection of any current or future claim).

Applicant reserves the right to argue additional reasons supporting the allowability of claims 1-5, 7-15 and 17-20 should the need arise in the future.

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**CONCLUSION**

Applicant respectfully submits that claims 1-5, 7-15 and 17-20 are in condition for allowance, and requests that the application be passed to issue.

Should anything remain in order to place the present application in condition for allowance, the Examiner is kindly invited to contact the undersigned at the telephone number listed below.

Please charge any required fees not paid herewith or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

Date: April 18, 2008

Respectfully submitted,

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